language on such note" means, in my humble opinion, an inability to read and comprehend the language in which the note is written.

In *Natha Singh* v. *Syed Abdul Rahman & Anor.*[2] Hepworth J. made an observation on the meaning of section 27 of the Moneylenders Ordinance which is of some assistance. That was also an appeal on the question of the illegality of a note for want of attestation but since the point was not raised in the court below and no evidence was recorded in regard to the borrower's knowledge of the English language the appeal was dismissed as the note *ex facie* showed no evidence of illegality. But in passing Hepworth J. remarked, and I quote:

"The promissory note with which we are concerned was legal on the face of it. It would only be illegal if the borrower did not understand the English language."

In my opinion section 27 of the Ordinance was enacted for the purpose of regulating the business of moneylenders and to enforce upon them a code of discipline in order to ensure that no borrower is victimised. To that end, attestation was made compulsory irrespective of whether the borrower understood the contents of the note or not as long as he could not ascertain the terms of the contract by his own knowledge of the language in which it is written.

However, the observation of Hepworth J. is *obiter dicta* and the decision in *Narayanan* v. *Alagappa, supra,* being a decision of a court of co-ordinate jurisdiction sitting on appeal, I am bound to follow it. It was so held by Wilson J. in *P. N. Mohamed Ibrahim* v. *Yap Chin Hock & Anor.*[3] following the decision in *Young* v. *Bristol Aeroplane Co. Ltd.*[4]

The decision in *Narayanan* v. *Alagappa, supra,* was based on a finding that the borrower, notwithstanding his ignorance of the language in which the note was written was nevertheless aware of the contents of the note. The second ground of appeal in the present case is that the learned magistrate erred in finding that the appellant was aware of the contents of the note. It is reasonable to presume that every person who enters into a written contract is aware of the terms of the contract to which he had appended his signature unless the contrary is proved. I see no reason why that presumption which is applied to all sorts of contracts should not be applied to a moneylending contract. In this case the appellant admitted that he was familiar with moneylending transactions and had several dealings with the respondent in the past. Nowhere in his evidence did he say he did not know the terms of the contract in the promissory note which he had signed. All what he said was that he did not understand the English language. I see, therefore, no reason to disagree with the finding of the learned magistrate.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Cheang Lee & Ong; Dharmananda & Co.*

RATNA AMMAL v. TAN CHOW SOO

[O.C.J. (Raja Azlan Shah J.) June 25, 1966]

[Penang — Civil Suit No. 164 of 1963]

Bills of Exchange — Cheque — Plea that cheque was given for illegal consideration — Barter trade — Bills of Exchange Act, 1882, s. 30(2).

The plaintiff claimed against the defendant as drawer of a cheque for $50,000. In his defence the defendant admitted that he was drawer of the cheque but pleaded that it was given by him to one *M.R.* for an illegal consideration and that the plaintiff was the mother of the said *M.R.* It was alleged that there had been a conspiracy under the terms of which *M.R.* who was employed in the Foreign Exchange Control Department was to assist in getting permits for the export of goods to Indonesia and the cheque was part of a payment to a syndicate consisting of *M.R.*, the staff of the Indonesian consulate in Penang and one *L.*

Held: on the evidence, the defendant had proved that the cheque was given *M.R.* and that at the time it was given it was tainted with illegality and therefore void and as the plaintiff had failed to prove that subsequent to the illegality, value had been given in good faith for the cheque, the claim must be dismissed.

Cases referred to:—

(1) *Tatam* v. *Haslar* (1889), 23 Q.B.D. 354.

(2) *The Board of Trade* v. *Owen* [1957] 2 W.L.R. p. 351 at p.'359.

(3) *Cope* v. *Rowlands* (1836), 2 M. & W. 149; 2 Gale 231; 6 L.J. Ex. 63; 150 E.R. 707.

CIVIL SUIT.

P. P. Dharmananda for the plaintiff.

C. O. Lim for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: The plaintiff claims against the defendant as drawer of cheque No. 459527 for the sum of $50,000 dated 24th January 1961 and drawn by the defendant upon the Nederlandsche Handel-Maatschappy, Penang, (hereinafter referred to as the bank) payable to bearer. She claimed to be the holder of the said cheque on 24th January 1961 and duly presented it for payment on 5th July 1963 but the said cheque was dishonoured, payment thereof having been countermanded by the defendant. The plaintiff gave notice of the dishonour to the defendant by letter dated 6th July 1963. The defendant admits that he was the drawer of the said cheque but pleaded that it was given by him to one Mahalingam Ratnavale for an illegal consideration contrary to public policy or forbidden by statute. He alleged that the plaintiff who is the

mother of the said Ratnavale became the holder of the said cheque knowing fully well that it was given for an illegal consideration. In the alternative the defendant pleaded that the plaintiff paid no consideration to any party whatsoever to become the bearer of the said cheque.

The law applicable to the present case is the English Bills of Exchange Act, 1882, hereinafter referred to as the Act. By virtue of sub-section (2) of section 30 of the Act, every holder of a bill is *prima facie* deemed to be a holder in due course. That is, he is presumed to have given value for it in good faith, without notice of any defect in title of the person who negotiated it. He will therefore have to do no more than to prove the signature of the person sued, everything else being presumed in his favour. The burden will then be on the person sued to prove that no consideration has at any time been given. But to this rule there is an exception. If in an action on the bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is tainted with fraud or illegality of some kind, if in fact the consideration is, or is deemed to be, illegal, then this presumption no longer holds good. The burden of proof is shifted and it is now the holder of the bill who must prove affirmatively that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill, though not necessarily by himself: see *Tatam* v. *Haslar*.[1] If he can do that, he will still win his action whatever the earlier history of the bill may be, unless he himself was a party to the fraud or illegality alleged. The holder who has been a party to the fraud or illegality can never succeed, though mere knowledge of it will not invalidate his title if he derives his title, not from a person whose own title is defective, but from one who is himself a holder in due course.

In the present case the defendant has admitted that he is the drawer of the said cheque and therefore the law presumes that the plaintiff is the holder of the said cheque in due course. The burden is therefore on the defendant to prove that the said cheque was tainted with illegality or there was total failure of consideration. If he has satisfied the court that on a higher degree of probability there was the element of illegality or total failure of consideration then the presumption in favour of the plaintiff no longer holds good and it is thus for the plaintiff to prove that subsequent to the alleged illegality value has in good faith been given for the bill, though not necessarily by herself.

Having stated the law, I shall now consider the facts. The defendant is a businessman having a place of business at No. 48, Prangin Road, Penang, under the firm's name of Chop Soo Seng. He was also connected with another business under Chop Guan Cheong of the same address. In 1956 he dealt in barter trade with Sumatra. The system in vogue then is as follows. He had to possess a licence from the Indonesian Consulate, Penang, in order to trade with Sumatra. When goods entered Penang, customs declarations had to be made. Payment for the goods were effected by 70 per cent. cash payment through the bank and 30 per cent. by way of barter trade. That evidence had not been challenged, and I accept it as it stands.

In 1958 there was unrest in Indonesia and goods were exported from that country through the good influence of military officers. Such goods freely entered our ports provided they were declared to the customs. Our Government did not permit remittances for such goods to Indonesia because of diplomatic severance. During this period businessmen sent their remittances either in cash or by goods through the black market in Singapore, and these clandestine payments were not known to our Government. Nonetheless these barter rights were very valuable because they fetched huge profits. They could also be assigned or sold to other people for huge profits. In 1960-1961 there was an acu e shortage of goods in Sumatra and traders here saw good prospects of making such profits by exporting goods to that country. However, such goods could only be exported if they could obtain a permit from the office of the Controller of Foreign Exchange, Penang. The assistant controller in charge of foreign exchange in Penang at the time was one Mahalingam Ratnavale. He was assistant controller from 1st January 1958 (*vide* G.N. 1158/58) until 19th July 1960 (*vide* G.N. 3045/60). One Lee Yim Wah (DW.2), a barter trader in Penang, saw the prospects of making huge profits. He had known Ratnavale in 1955 as a government employee in the Foreign Exchange Control Department, Penang. According to him, he discussed with Ratnavale the possibility of exporting goods to Indonesia and they came to an arrangement whereby on permission to export goods being granted through this good influence the owner of the barter rights would sell their rights to other traders and from the proceeds 25 per cent. would go to the owners and 75 per cent. to a syndicate consisting of Ratnavale, the staff of the Indonesian Consulate in Penang, and Lee Yim Wah.

Now, if this allegation is true, that would constitute an offence of criminal conspiracy within the ambit of section 120A of the Penal Code which reads as follows:

> "When two or more persons agree to do, or cause to be done —
>
> (a) an illegal act,
>
> (b) an act, which is not illegal, by illegal means,

such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".

I am not here to give an exegesis of the law of criminal conspiracy beyond stating that it consists of the very agreement between two or more persons to commit a criminal offence irrespective of the further consideration whether or not these offences have been actually committed. It is perhaps sufficient in this connection to quote the words of Lord Tucker in *The Board of Trade* v. *Owen* [2]:

"Accepting the above as the historical basis of the crime of conspiracy, it seems to me that the whole object of making such agreements punishable is to prevent the commission of the substantive offence before it has even reached the stage of an attempt and that it is all part and parcel of the preservation of the Queen's peace within the realm".

The agreement was between Lee Yim Wah, Ratnavale, and barter right owners to commit a crime under section 3(a) of the Prevention of Corruption Act 1961 which reads as follows:

"Any person who shall by himself, or by or in conjunction with any other person —

(a) corruptly solicit or receive, or agree to receive for himself, or for any other person

any gratification as an inducement to, or reward for, or otherwise on account of any member, officer or servant of a public body doing, or forbearing to do, or having done or forborne to do, anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the said public body is concerned, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand dollars, or to both such imprisonment and fine".

The fact that the crime was not committed or committed after the "officer or servant" has ceased to have any influence in regard to his principal's affairs is immaterial and irrelevant. That officer or servant is not on trial in the instant case and it is not for this court to go into the merits. It is needless to stress the obvious fact that such agreement is illegal and void as being contrary to statute and public policy if its object, direct or indirect, is the commission of a crime. The law has been laid down by Baron Parke in *Cope* v. *Rowlands*,[3] and I quote:

"It is perfectly settled, that where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or statute law, no court will lend its assistance to give it effect".

DW.2 went to look for such traders who owned barter rights and found eleven such people including the defendant. At that time the defendant had barter rights to the value of $1,400,000 in the name of his other business firm Chop Guan Cheong of No. 48, Prangin Road, and such rights would fetch a profit of between $500,000 and $600,000. About February 1960 DW.2 saw and negotiated with the defendant about the latter's barter rights. He told the defendant that he was Ratnavale's agent and that he could make the necessary arrangement to obtain the permit. The defendant believed him for, apart from knowing him for the last 20 years, he had bought such barter rights from him. The defendant handed all his customs declaration papers to DW.2. In March 1960 DW.2 saw Ratnavale in regard to the defendant's business. In July or August 1960 DW.2 took the defendant to a house in Scotland Road, Penang, a government quarters, and there the defendant saw Ratnavale for the first time. They discussed the permit and the rate was ultimately fixed at 25 per cent. to the defendant and 75 per cent. to Ratnavale and his associates. The defendant agreed to consider the proposition. At that meeting it was also agreed that security in the sum of $50,000 be given to Ratnavale if the defendant should agree to that proposition. In January 1961 DW.2 came to the defendant's shop. The defendant was anxious to get a permit as the barter rights then fetched considerable profits. He asked DW.2 about it and the latter replied that it would be passed and asked him not to worry. The defendant then decided to accept Ratnavale's proposition and drew an undated cash cheque for $50,000 (Exh. P1) the subject matter of this suit.

DW.3 Koay Teik Choon, stated in evidence that he prepared the body of the cheque on 19th January 1961 on the instructions of the defendant. He remembered the date because the cheque butt on which he wrote the date of the cheque was given to the police in the course of their investigations into this case. It was therefore not produced in evidence. No adverse presumption can be inferred from this omission because it was not deliberately withheld. In any case DW.3 was not challenged in his evidence and there is no reason why his evidence should be rejected. I accept his evidence that he prepared the body of the cheque on 19th January 1961 and the cheque was not dated.

The defendant then signed the undated cheque and handed it to DW.2 with instructions to hand it to Ratnavale. There was a stipulation that the said cheque was not to be negotiated or encashed until he had sold his barter rights and redeemed the cheque. The defendant denied handing the cheque to the plaintiff because he said that at that time he did not know the plaintiff. He said he first came to know her when her son Ratnavale came to negotiate on the renting of his house at No. 33B Ayer Hitam some time towards the end of March 1961.

DW.2 stated in evidence that he handed the cheque to Ratnavale at his house at Scotland Road in the presence of the plaintiff on 19th

January 1961. He testified that he kept an account book of his barter right dealings sold and money given to Ratnavale and money retained by him. The account books were taken by the police who were investigating into this case. To my mind no adverse. comment can be made on this point as there was no deliberate attempt to withhold the account books.

The defendant's barter rights were ultimately sold by DW.2 in Singapore in July 1961 for $117,946.60 but he said he was paid only $57,525.30. In the meantime he said he had paid various sums totalling $20,500 to Ratnavale.

In March 1961 Ratnavale told DW.2 that his work was temporarily suspended and as a result he had to vacate his government quarters and had to rent a private house. DW.2 took Ratnavale, his wife, and the plaintiff to see the defendant with a view to renting his house at No. 33B Ayer Hitam, Penang. These people became close friends. Ratnavale and DW.2 jointly put up a shipping business in May 1963 under the name of Sin Min Shipping Co. with a registered place of business at No. 241, Beach Street, Penang. By the end of the year Ratnavale, the plaintiff, and the defendant entered into the business of importing condensed milk under the name of Maha Syndicate. The defendant did many things and favours for Ratnavale. He permitted Ratnavale to withdraw money from his firm Chop Soo Seng. To fortify that view the defendant produced a bundle of documents (Exh. P9) which represents bills of Ratnavale which the defendant's firm had paid for him. They consisted of telephone bills in respect of premises at No. 19, Scotland Road, which is the plaintiff's residence, water, conservancy, and electricity bills in respect of No. 19, Scotland Road, and No. 16, Cheesman Road (where Ratnavale s second wife resided), and Ratnavale's personal account. As things went Ratnavale and the defendant had had differences of opinion which resulted in a series of legal proceedings between them. In June 1963 the plaintiff and Ratnavale filed Civil Suit No. 123 of 1963 in respect of the partnership business. In July 1963 the plaintiff instituted the present case against the defendant. In October 1963 Ratnavale and the plaintiff instituted Originating Motion No. 13 of 1963* in regard to the trade mark of Maha Syndicate. In December 1963 the defendant filed Civil Suit No. 349 of 1963 against both the plaintiff and her son for infringement of his trade mark. With regard to the said cheque, the defendant stated that he had on five or six previous occasions orally demanded for its return but was not successful. As Ratnavale wanted to cash it, the defendant countermanded it on 22nd March 1963.

* [1964] M.L.J. 24 affirmed by F.C. [1964] M.L.J. 399.

The plaintiff's counsel sought to discredit the defendant's version in more than one way. Firstly, it was contended that there was the utter impossibility of the event which the defendant said had occurred. It was alleged that the entire transaction as pleaded in paragraph 2 of the statement of defence took place in August 1960 whilst the evidence showed that the said cheque was alleged to have been handed to Ratnavale in January 1961. In my view, I cannot read the paragraph as disclosing a transaction that occurred on one single day. To succumb to that temptation would be to ignore reality. Secondly, it was said that the defendant's evidence was contradicted by his own affidavit. I am not going into detail on that proposition beyond stating that it is lacking in merit. Thirdly, it was said that the defendant's evidence was contradicted by that of Lee Yim Wah. To my mind the gist of his evidence on this point was that the sum of $20,500, which was another aspect of the same transaction, was not correlated with the said cheque. The money was paid in 1960, part of which was given to Ratnavale through him and the balance direct to Ratnavale. If this aspect of the case is not overlooked, to my mind there is no contradiction between the two witnesses. The same reasoning would be accorded to the sum of $20,878.19. Fourthly, it was contended that Lee Yim Wah's evidence is contradicted by his own statutory declaration (Exh. P10). I admitted the declaration as a previous statement. I am satisfied that he made the declaration before the commissioner for oaths at Penang. The *praecipe* confirms this. The commissioner is now dead, but it was proved to my satisfaction that the signature is his. In this court Lee Yim Wah has retracted the contents of his declaration at his own peril. However that may be, it should not invariably be a reason for rejecting an explanation. He explained that when the declaration was brought to him by Ratnavale it had already been prepared by him at his solicitor's office in Ipoh. Ratnavale told him that as he was always going to Jakarta his declaration would facilitate him to sue the defendant in the present case. In my view, that declaration was made in contemplation that he would not be made available as a witness in the present case. Since he was a witness in the present case his declaration may only be used as a previous statement. In the light of his explanation I have therefore to consider his whole evidence with caution. Fifthly, it was argued that in assessing the value of the evidence of both the defendant and Lee Yim Wah there is the circumstance that the barter rights were in the name of Chop Guan Cheong which was under the sole proprietorship of one Tan Guan Fatt. The account books of the firm were not produced to show that they possessed $1,400,000

worth of barter rights. Lee Yim Wah said, and I quote:

"I know Tan Guan Fatt. He is the sole proprietor of Chop Guan Cheong under the Business Regulations Ordinance but he is in partnership with the defendant".

The defendant said, and I quote:

"These rights were in the name of Chop Guan Cheong, another shop of mine".

In the eyes of the law, Tan Guan Fatt may be the sole proprietor, but as between their own private arrangement they were partners. So be it. With regard to the account books, no doubt they can in many cases be cogent and convincing, but the lack of them, however, should not be a criterion for not considering the defendant's evidence that he is a businessman dealing in barter trade with Indonesia and such barter trade had a large amount of profits. It is therefore highly probable to my mind that the barter rights of Chop Guan Cheong were worth $1,400,000. Sixthly, it was contended that if it was necessary to provide security that could have been done by Lee Yim Wah selling the barter rights and with the proceeds paying the defendant and Ratnavale their respective shares. Security in the form of a cheque would therefore be otiose. That argument is attractive, but it overlooks this fact: the said cheque was a condition precedent for getting the barter rights. For once it had been granted and the barter rights sold there was no way to enforce payment should Lee Yim Wah in collaboration with the defendant refuse to pay Ratnavale as the transaction was tainted. I observe that this is an unusual transaction demanding unusual terms, and accordingly a request for a cheque as security is not altogether unreasonable. Lastly, it was strenuously urged that what Ratnavale had told DW.2 and the defendant about the alleged conspiracy was not admissible as infringing the hearsay rule. I cannot accede to that proposition. What in fact happened according to the defendant's version was that at one stage DW.2 conferred with Ratnavale about the prospects of making money. In the instant trial Ratnavale was not called as a witness for obvious reasons. DW.2 gave evidence as to what had transpired between them. His evidence related to their conference and their ultimate decision to find persons with barter rights who were desirous of selling them and to share the profits between them. The omission on the part of Ratnavale to give evidence to support DW.2's evidence would only affect the weight of the latter's evidence and no more. In estimating what weight to be attached to DW.2's evidence regard must be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of his evidence and in particular to the question whether or not he had any motive to conceal or misrepresent the facts.

The plaintiff's case is as follows. She is a widow aged 66 years. She stated that her late husband, a man of some wealth, died in March 1959 leaving her some property — estates in Tampin, Gemas, Penang and Kuala Lumpur. Her son Ratnavale was the assistant controller of foreign exchange, Penang, and lived at No. 71, Scotland Road, which is a government quarters. When he left the government service he rented the defendant's house at No. 33B Ayer Hitam. This was in December 1960. The plaintiff then came to know the defendant and they became close friends. About two or three weeks after Ratnavale had moved into his new house, she said that the defendant came with Ratnavale to her house at No. 19, Scotland Road, and explained his difficulties to her and asked her for a loan. After consulting Ratnavale whether it was alright she gave him a cash cheque dated 27th December 1960 for $3,000 (Exh. D4). In return the defendant gave her a cheque for a similar amount as security. That loan has been settled. The plaintiff stated that on 13th January 1961 the defendant came again with Ratnavale and asked her for another loan of $10,000. After consulting Ratnavale she gave him a cash cheque for $9,000 (Exh. D5) and $1,000 in cash. In return the defendant gave her a cheque for $10,000 after telling her not to pay it into her bank since he would soon have the money to repay. At this period the plaintiff had a bank account in her own name with the Overseas Chinese Banking Corporation and another account with the Indian Overseas Bank. The account with the former bank was in the red but she said she had over-draft facilities to the amount of $80,000. In fact she said her Scotland Road house was mortgaged by Ratnavale to the bank to safeguard the amount in order to provide for her children's marriages, her children's studies abroad, maintaining the Scotland Road house and the estates and financing Ratnavale in some petty business. Her account with the Indian Overseas Bank was started in 1959 with a modest sum. She had also another joint account with her children in another bank the name of which she said she could not remember. It was also a small account. When confronted with the question as to whether it would have been more convenient for her to draw a cheque for $10,000 in response to a request for a loan for that amount she replied that since she had ready cash of $1,000 she gave that amount to the defendant together with Exh. D5. She explained that as her account with the Overseas Chinese Bank was in the red, any over-draft would carry interest. The plaintiff alleged that on 21st January 1961 the defendant came again with Ratnavale to her house and asked for yet another loan of $40,000. Again, after consulting Ratnavale, she gave the defendant a cash cheque

for $25,000 (Exh. D6) and told the defendant that he could have the balance of the money later if he urgently needed it. It was alleged by her that the defendant gave her a receipt for a similar amount. On 23rd January 1961 the defendant again came with Ratnavale and requested for another loan of $15,000. Again, after consulting Ratnavale, she agreed and did give him a cash cheque for this amount (Exh. D7). She said that the defendant wanted to give her a receipt but she did not want it when the defendant told her that he would give her his cheque on the following day. On that day the defendant came and gave her a cash cheque for $50,000 (Exh. P1), the subject matter of this suit. She then returned to him his cheque of $10,000 and his receipt. It is interesting to note that on each occasion it was alleged that a loan was given to the defendant, Ratnavale was always present and the plaintiff had to consult him before giving any loan. Her explanation was that she had to consult Ratnavale as she had no one else to consult. She now claimed that the loan had not been repaid despite repeated demands.

The defendant admitted that Exh. D6 was borrowed from the plaintiff and credited to his account. There is an entry in the credit column of the bank statement of Chop Soo Seng, Exh. P11, to wit, "January 23, P.D. — $25,000". "P.D." means paid in deposits. But he denied that the said cheque, Exh. P1, was given in consideration for cheques Exhs. D5, D6 and D7 and cash $1,000. Lee Kim Seng, DW.4, the defendant's former clerk and cashier, testified that Ratnavale gave his cheques Exhs. D5 and D7 on 13th January 1961 and 24th January 1961 respectively and asked him to cash them at the shop. As there was insufficient money at the shop, Ratnavale asked him to get them cashed at the bank. DW.4 did that while Ratnavale waited at the shop. He then handed the cash to Ratnavale. Apart from the two cheques, Ratnavale had asked DW.4 to cash several cheques ranging from $500 to several thousand dollars. Plaintiff's counsel to contradict this assertion. Firstly, it was contended that there was no reason why Ratnavale should have asked DW.4 to cash the cheques for him at the bank. If he wanted to cash them he would have no difficulty in going to the bank himself. To my mind, to ask DW.4 the cashier to a businessman dealing in barter trade to cash cheques involving large sums of money is not unreasonable for it would not attract public attention. But for Ratnavale, an ex-government employee, to cash cheques within a space of ten days would attract such attention. It may be argued that since they were plaintiff's cheques no criticism would be made against Ratnavale if he had cashed the cheques himself. That may be so, but the plaintiff had said nothing on that point. What she alleged was that she handed those cheques to the defendant, but when we consider Koay Teik Choon's evidence (DW.3), the probability that was so is no longer tenable. When asked by the plaintiff's counsel about the cheque for $3,000 dated 27th December 1960 (Exh. D4), DW.3 testified that Ratnavale gave him the said cheque and he encashed it at the bank and gave him the money. That part of his evidence was never challenged and to my mind it has a ring of probability. If it is probable that Ratnavale had given Exh. D4 to DW.3 to encash at the bank, it is not highly improbable that Ratnavale had asked DW.4 to cash Exhs. D5 and D7 at the bank. Secondly, it was said that the bank statement (Exh. P11) showed that on 13th January 1961 the account of Chop Soo Seng was credited with a sum of $10,000 cash and on 24th January 1961 with the sum of $16,800 cash. That being so, it was more probable that Exhs. D5 and D7 were presented to the bank. That argument, though it has its attractions is, I think, too great a simplification of the matter and omits various considerations. If Exhs. D5 and D7 were credited to the plaintiff's account, then the entry next to the date would bear the letters "CH", meaning that the credit was made by cheque. Again, the entry of $10,000 cannot be tallied with the encashment of the cheque for $9,000 (Exh. D5). If such entry consisted of Exh. D5 and the sum of $1,000 in cash, then the entry would have been "CH" for $9,000 and "CS" for $1,000. To my mind, the said entry and Exh. D5 bear no relation to one another. I would also make a similar observation on Exh. D7. The entry of "CS" for $16,800 on the credit column cannot arithmetically or mathematically be reconciled. However, a cogent piece of evidence in favour of the defendant is that, to my mind, it is a little strange for the plaintiff, who was enjoying over-draft facilities with her bank, to lend money to the defendant who was also enjoying similar over-draft facilities but for a bigger amount. In the light of this observation I have to consider the defendant's bank statement (Exh. P11). On page 6, starting from 10th January 1961 to 16th January 1961, for a brief period of six days the amount paid in to the credit of the defendant was nearly $25,000. And on page 7 which covers the period 17th January 1961 to 24th January 1961, a brief period of a week, the payments received, excluding the cheque Exh. D6 for $25,000 which is admitted, would be close to $40,000. An analysis of the credit items in pages 6 and 7 of the bank statement, apart from the two entries of $10,000 and $16,800 would show that for a period of 13 days close to $60,000 had been paid in to the credit of the defendant. This, in my view, swings the balance of probability in favour of the defendant that he never borrowed these monies from the plaintiff.

The above observation must then be construed in the light of the plaintiff's background, and when that is done I have no doubt in my mind that her evidence is not worth a moment's glance. She contended that her late husband died possessed of some wealth. However, she was unable, and from her demeanour in the witness box she was unwilling, to divulge the extent of that wealth although she did give some indication of the property at four places. The best evidence available would be to furnish the petition for probate in respect of her late husband's estate. That was not done. At no time was she in business apart from being a sleeping partner in Maha Syndicate. The question that follows is how did she obtain all those monies which she claimed she loaned to the defendant. After anxious consideration I cannot but come to the inevitable conclusion that she did not lend any money because she had none. I base my conclusions on the following grounds. She contended that the $50,000 loan was made up by adding Exhs. D5, D6 and D7, which make a total of $49,000. Arithmetically, $1,000 was missing, so she said she gave $1,000 in cash to the defendant. In view of my observations on the bank statement of Chop Soo Seng (Exh. P11) and of the probability that a businessman like the defendant who enjoyed greater over-draft facilities would not borrow money from the plaintiff who enjoyed a lesser amount of over-draft facilities, her attempts to justify the $50,000 loan cannot stand. Secondly, the estates and wealth which she claimed she derived from her late husband were but a figment of her own imagination. No evidence was led to substantiate her averment. Thirdly, only ten days separate these three cheques (13th — 23rd January 1961) involving $49,000. Apart from the consideration of over-draft facilities, it is not in line with human conduct for a person to request for a series of loans within a short space of time for so large an amount, and it is also against human nature for a person to grant a series of loans within a short space of time for so large an amount. Such proposition as the plaintiff contended not only strikes the mind with utter amazement but also to the point of incredulity. If it is necessary to decide between the evidence of the defendant and that of the plaintiff, I have no hesitation in accepting that of the defendant. He gave his evidence in a straightforward manner and I consider him to be a truthful witness. On the other hand, the plaintiff was speculative and at times evasive in her answers in cross-examination. The weight and character of her testimony can be gauged by the various wild statements she made in court such as the one that she was helping her son in a petty business; upon being pressed by defence counsel, the "petty business" turned out to be the Maha Syndicate which she admitted as having a capital contribution by her son and herself totalling $1,161,000. How did she raise that large sum of money? She said she mortgaged her Scotland Road house to provide for that amount and with the same source of income she said she had to provide for her children's marriages, their education abroad, and maintaining her house and estates. Would that amount raised on the mortgage, alleged to be $80,000, be sufficient to provide capital for Maha Syndicate? The answer speaks for itself. However, in the next breath she claimed that the $1,161,000 was raised by mortgaging her Scotland Road house and her two other estates in Kuala Lumpur and Gemas which had since been redeemed, and overdrafts. On being asked for how much the estates were mortgaged she said she did not know.

Having reviewed the evidence as a whole, I am satisfied that on the balance of probability as is required to be proved in a case of this nature, the defendant has substantiated his claim that the cheque was given to Ratnavale and that at the time it was given it was tainted with illegality and is therefore void. It is manifest that in the circumstances this court cannot entertain the plaintiff's claim. Here I pause to comment on counsel for the plaintiff's submission that once the defendant and DW.2 have contradicted themselves there must be corroboration to support their evidence. In my view, the the two witnesses have not materially contradicted themselves. No doubt, as I have indicated above, DW.2's evidence must be treated with caution, but after observing his demeanour I accept his evidence. That, coupled with the defendant's evidence and other surrounding circumstances have led me to the conclusion at which I have arrived.

That being the case, it is now on the plaintiff to prove that subsequent to the illegality, value has in good faith been given for the bill. She has failed to do that, her assertion being that she received the said cheque direct from the defendant. In respect of that proposition, I have not the least hesitation in saying that is highly improbable. I therefore dismiss the case with cost

Claim dismissed.

Solicitors: *Dharmananda & Co.; Lim, Lim & Oon.*

OLOFSEN v. GOVERNMENT OF MALAYSIA

[O.C.J. (Ambrose J.) June 25, 1966]

[Singapore — Suit No. 1047 of 1965]

International law — Suit against foreign government — Jurisdiction — Republic of Singapore (Independence) Act, 1965.